

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PREPARATION FOR TRIAL - REVISED December 13, 2000

THE HONORABLE S. ARTHUR SPIEGEL

These instructions are intended to familiarize you with the procedures in the court of The Honorable S. Arthur Spiegel.

The ever-growing number of cases pending in the United States District Court imposes a burden upon both lawyers and judges. We owe a duty to advance the administration of justice by making the trial an efficient, expeditious and clear exposition of the real issues.

These procedures are designed to prevent waste of time and expedite the administration of justice without impeding in any way your ability, as an advocate, to present your client's case fully and fairly.

For your assistance, the following information is included herein:

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I.
GENERAL PROCEDURES

A. PRETRIALS

Within sixty (60) days of the filing of civil actions, the Court will set the case for a preliminary pretrial conference unless there are pending motions. Such conference will deal with preliminary questions and a schedule for discovery. The Court will establish cut-off dates for motions addressed to the pleadings and for discovery; a tentative date for the final pretrial conference and a tentative date for trial will be set at the conference, or counsel will be notified of dates soon afterward. Out-of-town counsel need not be present for preliminary pretrial conferences unless otherwise notified by the Court. A telephone conference can be arranged to include all out-of-town counsel.

Either counsel may at any time request an additional preliminary conference, and such request will be granted.

Pursuant to Federal Rule of Civil Procedure 26(f), the parties must meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case and to make or arrange for the disclosures required by Rule 26(a)(1). This meeting should take place as soon as practicable after commencement of the suit and must take place at least 21 days before the scheduling conference.

In addition, the parties, at this meeting, are to develop a discovery plan that indicates the parties' views and proposals concerning:

- (a) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;
- (b) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;
- (c) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and
- (d) any other orders that should be entered by the court under Rule 26 (c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference and for attempting in good faith to agree on the proposed discovery plan.

The discovery plan shall be submitted to the Court within 14 days after the conference. In addition, parties should bring copies to the preliminary pretrial scheduling conference.

Approximately thirty (30) to forty-five (45) days or more prior to the trial date, a final pretrial conference will be held. At least three (3) days prior to such final pretrial, counsel will file a joint pretrial order with the Clerk of Court in the form set forth in Section III of this "Preparation for Trial" packet. Trial counsel are expected to be present at final pretrial conferences. No attorney who has not attended the final pretrial conference may act as trial counsel except with the Court's permission.

B. LIMITATIONS UPON BRIEFS AND MEMORANDA

Briefs and/or memoranda in support of or in opposition to any motion to this court shall not exceed twenty (20) pages submitted on 8 1/2" by 11" paper. Briefs or memoranda exceeding this limit must contain an outline, summary of points and authorities relied upon which may not exceed ten (10) pages. All documents submitted shall be double-spaced and contains appropriate margins.

Rules of the United States
District Court for the
Southern District of Ohio.
3.4.1 and 4.0.3

C. TRIAL ASSIGNMENT

Trial dates will be set as described previously. For good cause, a date may be rescheduled, at the Court's discretion.

While it will be the Court's goal to try all cases within one year of the preliminary pretrial conference, litigation involving class actions, antitrust, patents and other complex litigation will, where advisable, proceed on a more extended schedule. Title VII cases may be expedited upon request of counsel if the Court's schedule permits.

D. COURTROOM PROCEDURE

Conduct of counsel during the progress of cases will be governed by the following instructions:

1. Counsel Tables

The plaintiff in all civil cases and the United States Government in criminal cases will occupy the counsel table to the Court's right. Defendants in both civil and criminal cases will occupy the counsel table to the Court's left.

2. Court Session

Trials to the Court will usually start at 9:00 a.m. Trials to a jury may start at 9:30 a.m. on the first day and at 9:00 a.m. on all succeeding days. The morning session will continue until approximately 12:15 p.m. There will be a morning recess of approximately 15 minutes at or about 10:30 a.m. The afternoon session will usually end at approximately 5:00 p.m. There will be a recess of 15 minutes at approximately 3:00 p.m.

3. Interrogation by Counsel

Counsel will interrogate from the lectern at all times. Since all exhibits will have been previously deposited with the Courtroom Deputy Clerk, counsel will request the Clerk to hand specific documents to the witness. Documents intended for impeachment purposes which are not admitted into evidence will be handed to the Courtroom Deputy Clerk for suitable marking, then handed by him to the witness. Counsel may not, without specific permission, approach any witness during interrogation.

4. Addresses by Counsel

Counsel will address the Court and the jury in the following manner:

- (a) Voir dire examinations, opening statements and closing arguments will be conducted from the lectern facing the jury.
- (b) All addresses to the Court will be made from the lectern facing the Court.

5. Qualification of Jury

Counsel will conduct voir dire examination unless otherwise advised at a pretrial conference. At times, a civil jury may be impaneled by the United States Magistrate in advance of trial. Civil juries will consist of six persons plus one or two alternates.

If the Court conducts voir dire examination, counsel are requested to submit any questions in writing to the Court in advance of trial. Supplemental examination by counsel should be limited to matters peculiarly applicable to the individual juror's qualifications.

Counsel may not repeat in the same or other form of language questions put to the panel by the Court.

Counsel must address questions to the entire panel of prospective jurors. Counsel may question an individual juror only if such juror responds affirmatively to questions put to the entire panel. The Court will limit individual examination to those matters pertinent to the issue at trial.

6. Peremptory Challenges

- (a) Peremptory challenges will be exercised at the bench, alternately, with the plaintiff exercising the first challenge. The Court will announce those who are excused.
- (b) A pass does not count as a challenge.
- (c) After any round of challenges is complete, those remaining in the box at that time may not be challenged later.
- (d) At the conclusion of the peremptory challenges, the Court will indicate the composition of the jury.

7. Examination of Witnesses

- (a) In advance of trial, counsel will instruct all his witnesses to answer

questions with courtesy. Evasive answers, answering a question with a question or disrespect to opposing counsel will not be permitted.

- (b) Counsel are expected to extend equal courtesy to all witnesses. Counsel will wait until the witness has finished an answer before asking the next question. Multiple questions and repetitious questions will not be permitted. Counsel may not, by any action, inflection or expression indicate disbelief of any witness' answer.
- (c) Counsel will indicate to the Court that he has completed examination of a witness. Only the Court will advise opposing counsel to proceed.
- (d) Counsel will stand when making an objection. No explanation of the objection may be made unless counsel are called to a bench conference.

E. FOREIGN COUNSEL

Counsel admitted to practice before any United States District Court may, upon motion, be admitted in the Southern District of Ohio for purposes of appearance in a specific case. Such permission will be conditional only and may be withdrawn at any time. See Flynt v. Leis, 439 U.S. 438 (1978).

Conditional admission may be withdrawn for failure to observe the following:

- 1. Counsel will, in accordance with the rules of the Southern District of Ohio, obtain local counsel admitted to the bar of this Court to serve as co-counsel. Such co-counsel shall participate in a meaningful fashion in the preparation and trial of the case.
- 2. Counsel will abide by the rules of this district and the general orders of this Court.

II. TRIAL PRACTICES

A. PREPARATION OF EXHIBITS

Counsel for each of the parties will assemble all documents, photographs, or other materials expected to be used at trial. Such documents or copies thereof shall be made available to opposing counsel prior to the final pretrial conference.

The following procedure will be followed:

- (a) All such documents, photographs and other matter will be assembled in binders with each exhibit bearing a numbered exhibit sticker and the same number on a tab extending beyond the binder on either the bottom or right side thereof. Joint exhibits will bear Roman numerals; plaintiff exhibits, Arabic numbers; and defendant exhibits, letters. Third-party exhibits may be numbered with an identifying letter prefix.
- (b) Where defendant exhibits exceed 52, defense counsel will promptly advise opposing counsel. In such event, both sides will identify exhibits by number, using alternate three-digit sets; i.e., plaintiff, 100-199, 300-399, 500-599, etc.; defendant, 200-299, 400-499, 600-699, etc.
- (c) Each counsel will deposit two complete sets of his exhibits with the Clerk of Court at least ten (10) days prior to trial.¹

Exhibits deposited with the Clerk may be used by any party at trial.

Counsel should offer all their exhibits into evidence during the trial before they rest.

Admissability of exhibits submitted for jury examination during trial as well as photographs, slides and films displayed to the jury may be determined prior to such examination or display.

Please note that in all cases, jury and non-jury alike, the second set of documents is intended for the use of the Court.

B. JURY INSTRUCTIONS

All requests for special instructions must be submitted to the Court and opposing counsel at least three (3) days prior to trial. Special instructions include all those relating to the particular issues in your case. Requests upon issues that could not reasonably be foreseen in advance may be submitted at least twenty-four (24) hours prior to final argument. Each instruction should be on a separate 8 1/2" x 11" sheet of paper identified as "Plaintiff(s)/Defendant(s) Requested Instruction No. ____." Each requested instruction should be placed on a separate page. All instructions must contain a citation of authority upon which counsel relies. Requested instructions that do not contain such citation will be rejected.

The Court uses as sources for charges, among others, Pattern Instructions of the Fifth Circuit, Devitt and Blackmar's "Federal Jury Practice and Instructions, 3d Edition," and Ohio Jury Instructions. The Court

¹The second set of documents may contain Xerox or equivalent copies of photographs.

is bound by determinations of the Supreme Court of the United States and the United States Court of Appeals for the Sixth Circuit. Where appropriate, determinations by the Supreme Court of Ohio, or in the absence thereof, determinations by the Ohio District Courts of Appeals will be deemed binding.

The Court will consider as persuasive only decisions by the United States Court of Appeals for circuits other than the Sixth Circuit, decisions by the United States district courts, decisions by supreme courts of other states and decisions by appellate courts of other states, in that order.

Any proposed jury instructions, jury interrogatories, and/or special verdict forms are to be submitted at least three (3) business days before the trial date and must cite to all sources used. In addition, the Court requests that the parties submit a stamped courtesy copy with an accompanying computer disc that is compatible with WordPerfect version 8.0 to the Chambers.

C. DEPOSITIONS

If any depositions will be read, counsel will specify to opposing counsel and the Court at the final pretrial conference those portions of such deposition that will be read. Where a necessity for using a deposition develops thereafter, leave to use such deposition will be granted. Counsel will advise the Court as soon as the necessity to read a deposition becomes apparent. Opposing counsel will note objections to any portion of the deposition in advance of trial, and the Court will rule on the objections before the trial starts.

Videotape presentation must include a method for cutting off either sound or the entire picture from the jury in situations where the Court must rule on objections to testimony.

D. HYPOTHETICAL QUESTIONS

In those cases where a hypothetical question will be used, such question must be written in advance and submitted to the Court not later than the beginning of the session at which such question will be asked. Assumptions must be separately numbered and identified as to source, i.e., testimony of witness, deposition, admission, etc.

E. DEMONSTRATIVE EVIDENCE

If any sketches, models, diagrams or demonstrative evidence of any kind will be used during trial or in argument, they must be exhibited to opposing counsel at least ten (10) days prior to trial. Objections to such exhibits must be submitted to the Court for decision.

F. PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW

In trials to the Court only, counsel will, in addition to the joint final pretrial order, separately file at the time of the final pretrial conference those findings of fact and conclusions of law which each counsel believes the Court should make. This submission may be combined with a pretrial brief. Post-trial briefs will be limited to specific questions assigned by the Court during or after trial. The Court may permit counsel to file supplemental findings of fact and conclusions of law following the trial.

In all events, proposed findings of fact shall cite the particular witness(es) and physical evidence upon which each proposed finding is based; likewise, proposed conclusions of law will cite the most recent Sixth Circuit and Ohio decisions upon which counsel is relying.

G. DISCOVERY

A discovery cut-off date will be set at the initial pretrial conference. All discovery matters must be noticed to the other party before the cut-off date. Any discovery problems will be handled by the United States Magistrate, except for extension of the cut-off date, which will be considered by the Court.

Counsel may, by agreement, continue discovery beyond the cut-off date. No supervision or intervention by the Court, such as a Rule 37 proceedings, will occur after the cut-off date without a showing of extreme prejudice, except as to matters which were properly noticed before the cut-off date.

In accordance with Rule 26(f) of the Federal Rules of Civil Procedure, the parties will meet and develop a discovery plan. This plan must be submitted to the Court at within 14 days of the mandatory meeting provided in Rule 26(f). See Pretrials.

H. EXPERT WITNESSES

Unless otherwise ordered in the preliminary pretrial order, plaintiff will disclose to defendant the names of all expert witnesses at least ninety (90) days prior to the final pretrial conference. Unless otherwise ordered, defendant will disclose the names of all expert witnesses to plaintiff at least forty-five (45) days prior to the final pretrial conference.

I. PRE-SUMMATION CONFERENCE

It is the policy of the Court to hold a conference with counsel in chambers, on the record, prior to summation for the following purposes:

- (a) The Court will have prepared a complete jury charge which will be discussed in detail with counsel. Objections will be made at this time, and changes may be made at the Court's discretion. Counsel will know, before summations, the final composition of the charge. Counsel's attention is directed to Rule 51 of the Federal Rules of Civil Procedure and Rule 30 of the Federal Rules of Criminal Procedure.
- (b) Counsel and the Court will determine the length of summation to the jury. Plaintiff's counsel and the United States Attorney must use at least half of the allotted time in opening summation.